

NATIVE AMERICAN SERVICE AGENCY,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	Docket No. IBIA 94-163-A
EASTERN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 15, 1994

Appellant Native American Service Agency seeks review of a July 8, 1994, decision issued by the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to accept and review appellant's application for a FY 1994 Indian Child Welfare Act (ICWA) grant as an off-reservation organization. Appellant's application was filed pursuant to a notice of availability of funds published in the Federal Register. See 59 FR 25542 (May 16, 1994). Appellant's notice of appeal and statement of reasons, which were received by the Board of Indian Appeals (Board) on August 8, 1994, indicate that copies of the documents were also filed with the Area Director. For the reasons discussed below, the Board affirms the Area Director's decision. 1/

The Area Director's decision states that appellant's application was not accepted for three reasons: (1) the application failed to include an official request for an ICWA grant from appellant's board of directors, in violation of 25 CFR 23.33(b)(1); (2) the Standard Form 424 submitted by appellant was for one year, rather than the two years for which funding was sought, in violation of 25 CFR 23.33(b)(2); and (3) the application did not contain a specific outline of current written assurances that the requirements of Circular A-128 for fiscal management, accounting, and recordkeeping were met, in violation of 25 CFR 23.33(b)(8). 2/ Each of these requirements was repeated in the program announcement. See Parts III-C(1), III.C(2), and

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1/ Both the Area Director's decision and the program announcement informed appellant that it could file a statement of reasons in support of its appeal either with the notice of appeal or within 30 days after the notice of appeal was filed. See Part III.G. The Board concludes that appellant's statement of reasons, which was included with its notice of appeal, is the filing to which appellant was entitled under the program announcement, and that this appeal can be decided on the materials presently before it.

2/ Although the Area Director's decision incorrectly referenced 25 CFR 23.33(b)(2), rather than (b)(8), appellant was able to determine the correct citation.

III.C(8). Any one of these reasons standing alone would be sufficient to affirm the Area Director's decision. 3/

Concerning the Area Director's first reason for rejecting appellant's application, both his decision and appellant's statement of reasons indicate that the only document that could be construed as an official request for the grant was minutes of a board of directors meeting at which the application was discussed. Appellant contends that the regulations did not require a specific form for an "official" request, and that it was its

opinion that the statement "Frank made a motion to submit an application for the ICWA grant, Maria seconded the motion" and the description of an Ad Hoc committee to proceed with the application clearly reflect an official decision of the Board of Directors. For many Federal programs, the application form itself constitutes the official request for funds. Nonetheless, attached is a copy of the specifically worded resolution approved by [appellant's] Board of Directors on June 14, 1994.

(Notice of Appeal and Statement of Reasons at 2).

The Board cannot consider the resolution submitted on appeal. In reviewing decisions under other competitive BIA grant programs, the Board has consistently held that consideration of information presented after the date for filing an application would violate BIA's and the Board's duty to give fair and equitable consideration to all applications, by giving some applicants two opportunities to submit an acceptable application. Cf. Upper Sioux Community v. Acting Director, Office of Tribal Services, 25 IBIA 246 (1994) (Special Tribal Court program); Hughes Village Council v. Acting Juneau Area Director, 24 IBIA 192 (1993) (Small Tribes program); Chippewa Cree Tribe of the Rocky Boy's Reservation v. Acting Billings Area Director, 23 IBIA 129 (1992) (Planning grant program). Here, although the resolution submitted to the Board is dated June 14, 1994, which is prior to the ICWA program application deadline of June 30, 1994, the resolution was first submitted with appellant's notice of appeal, which was received on August 8, 1994. Accordingly, even though it appears that the resolution may have been in existence prior to the submission deadline, it was not timely submitted and cannot be considered.

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3/ Appellant also addresses a comment made on a form entitled "Area Office Certification Form Title II Grant Application," which was attached to the Area Director's decision. The comment states that appellant's assertion that it had a service population of 5,410 was "[n]ot supported with documents." No reference to this comment appears in the Area Director's decision. Accordingly, the Board concludes that the comment was not one of the reasons for the decision, and does not consider the arguments raised. Cf. Puyallup Tribe of Indians v. Chief, Branch of Judicial Services, 26 IBIA 125 (1994), and cases cited therein (it is a denial of due process to deny an application for financial assistance for reasons not communicated to the applicant).

Appellant argues that the minutes of its board of directors meeting should be considered "an official request." The Board notes that official actions of an organization are normally embodied in resolutions or a comparable document intended for outside distribution. Appellant does not contend that official actions taken by its board of directors are normally made public through the minutes of the meeting at which the topic was discussed. The Board concludes that the Area Director did not abuse his discretion in determining that the minutes of a meeting do not constitute an official request within the meaning of the regulations and the program announcement. Accordingly, it affirms this ground for the Area Director's decision. 4/

The Area Director's remaining two reasons for concluding that appellant did not meet the program eligibility requirements cannot be addressed without reference to the administrative record. However, because the Board has held that the first reason is well-founded, it concludes that the Area Director's decision can be affirmed on the basis of that reason, and see no purpose in delaying final resolution of this matter in order to address issues that will not affect the ultimate result in the appeal. The Board expresses no opinion concerning the remaining two reasons for the Area Director's decision. 5/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Eastern Area Director's July 8, 1994, decision is docketed, and the decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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4/ Cf. Cocopah Indian Tribe v. Chief, Branch of Judicial Services, 26 IBIA 107 (1994) (holding that an unsigned tribal resolution did not meet the requirements of a "current tribal resolution" within the meaning of the program announcement for the availability of funds under the Special Tribal Court program, 58 FR 53374 (Oct. 14, 1993)).

5/ In the interest of improving any possible future applications for BIA grants, appellant might, however, be well-advised to discuss these issues with the Eastern Area Office.